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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/818,077	03/27/2001	Julie R. Bartholomew	1026-001	9777

25215 7590 12/05/2002

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EXAMINER

TRAN, KHOI H

ART UNIT PAPER NUMBER

3651

DATE MAILED: 12/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/818,077

Applicant(s)

BARTHOLOMEW ET AL.

Examiner

Khoi H Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 17 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-5, 7-9 and 36-47 is/are pending in the application.
- 4a) Of the above claim(s) 38, 39 and 41-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-5, 7-9, 36, 37 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 11.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

1. Claims 38, 39, and 41-47 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species III, there being no allowable generic or linking claim. Applicant had made an election to prosecute Species I in Paper No. 9.

#### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 36 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Brown 5,903,465.

Brown '465 discloses a point-of-sale nail polish dispensing system (column 3, line 7) per claimed invention comprising. Brown's nail polish dispensing system (figure 1) dispenses nail polish into a package (8) and mixing it via a mixing mechanism (16). Brown's system includes a computer (26) for interacting with a retail customer to select a nail polish formulation and communicating information about a selection for use in controlling said dispensing system. The dispensing system includes a plurality of chambers (figures 2 and 3) each having an outlet with a nozzle 10. The dispensing system is capable of operating manually or automatically (column 3, lines 50-55).

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4, 5, and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 5,903,465 in view of Kraus et al. 4,871,262.

Brown '465 discloses all elements per claimed invention as explained in paragraph 2 above, including housing (2, figure 1) that permits the viewing of a packaging bottle. However, Brown is silent as to the specific of the housing allowing the viewing of the ingredient containers.

Kraus '262 discloses of a customized cosmetic dispensing system. The housing of the dispensing system comprises windows (19 and 25) for the viewing of ingredient containers (column 3, lines 23-25). Kraus teaches that the windows enable an operator to observe the available level of ingredient in each container.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided Brown's dispensing housing (2) with viewing windows so that the level of the ingredient containers can be observed by an operator, as taught by Kraus '262. Such observation will allow for the timely replacement of emptied ingredient containers.

5. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 5,903,465 in view of Kraus et al. 4,871,262 as applied to claim 1 above, and further in view of Lombardi et al. 6,177,093.

Brown '465 modified system discloses all elements per claimed invention as explained in paragraph 4 above. However, it lacks a personal viewing station and a camera for interfacing with a customer in providing virtual feedback to a user.

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Lombardi '093 discloses a customized cosmetic system at a point of sale. The system comprises a camera (70, figure 9), a spectrophotometer, and computer (74) having a viewing screen (76). Said system provides virtual feed back as to how a customer would look with different colored cosmetic products (paragraph bridging columns 5 and 6). Such feature also enables a customer to modify a color that is best suited for each individual's preferences.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Brown '465 customized cosmetic system with such camera and computer system, as taught by Lombardi '093, because it provides visual feed back as to how a customer would look with different colored cosmetic products. Such feature also enables a customer to modify a color that is best suited for each individual's preferences.

6. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brown 5,903,465 in view of Lombardi et al. 6,177,093.

Brown '465 discloses all elements per claimed invention as explained in paragraph 2 above. However, it lacks a spectrophotometer.

Lombardi '093, as explained in paragraph 5 above, teaches that a spectrophotometer is commonly used as an input device for a customized cosmetic dispensing system.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Brown's nail polish dispensing system with

a spectrophotometer because it facilitates a means of inputting customer's skin color into a customized cosmetic dispensing system, as taught by Lombardi '093.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

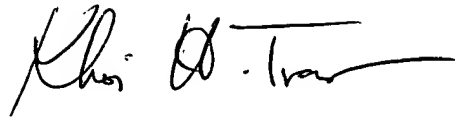
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and 7033057687 for After Final communications.

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A handwritten signature in black ink, appearing to read 'Khoi H Tran', with a long horizontal flourish extending to the right.

Khoi H Tran  
Examiner  
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KHT

November 19, 2002